



***Montana Fish,
Wildlife & Parks***

Commercial Use Rules

Step One: Identification of the Issues

February 16, 2005



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COMMERCIAL USE RULES SCOPING PROCESS

FWP conducted a public involvement process, referred to as the “scoping process”, in order to solicit input from the public on what they believe are the issues that need to be considered and/or addressed when developing rules for commercial use on lands and waters managed by FWP. FWP will use the information gathered through the scoping process and input from FWP staff to develop a proposal for administrative rules and present these to the Commission for consideration in the spring of 2006. FWP will also conduct an environmental analysis on the issues raised during the scoping process. FWP will then conduct another round of public meetings to solicit input on the draft rules and environmental analysis document. The Commission anticipates making a final decision in the fall of 2006.

The scoping process included public meetings in each of the seven administrative regions. FWP also invited the public to submit their issues in writing. The public input was organized into categories and this information will be presented to the Commission.

ISSUES TO CONSIDER AND/OR ADDRESS WHEN DEVELOPING THE RULES

Definition of “Commercial Use”

A number of people commented that the rules should include a clear definition for “commercial use” that would determine what types of use would or would not be governed by these rules. Some people asked whether or not the rules would apply to a particular type of use. *Note: At this point in time FWP is broadly defining commercial use to mean any person or entity (including non-profit organizations) that utilizes lands or waters managed by FWP for business or financial gain. FWP pointed out at the public meetings that this is a “working definition” that could be refined as time goes on.*

- Need a good definition of commercial use.
- Need expanded definition of commercial use. Commercial use rules may be unnecessary.
- “Commercial” needs to be defined. Traditional outfitters are widely considered commercial. However, other private conservation/education groups and non-profits have the same characteristics and so warrant comparable considerations. Traditional definitions are no longer adequate.
- Concerned that our conversation is about restricting use, and that is not our mission. The conversation should be about defining commercial use, and how it will be regulated.

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- An expanded definition of Outfitters might take care of the entire problem.
- How do you categorize educational groups, church groups, etc., in comparison to groups of outfitted clients? It is an important consideration and distinction.
- Would these rules apply to someone who owns property near a FWP site and rents canoes to people?
- Would these rules apply to shuttle companies?
- Would Gates of the Mountains Commercial Boat Tours be subject to Commercial Use Rules?
- Is the rule limited to only recreational commercial use?
- Guided clients are also the public. What's the difference between unguided public vs. guided public?
- How much financial gain must there be to be considered commercial use?
- What about a "water taxi", e.g. Wild Horse Island?
- What about equipment rentals that occur on private land?
- Would a commercial photographer be affected by these rules, e.g. the photographer that operated on the Alberton Gorge?
- The department already has a filming policy that was recently revamped and works well. Need to consider it when developing these rules.
- Concerned that the shooting of a coyote on FWP lands could be considered commercial use if you sold the hide.
- Grazing? Timber harvest? Mushroom picking? Antler gathering?
- Concerned how it would affect non-profit activities like the Sunrider Lions yearly fishing derby. All proceeds are profit, but are used to benefit others. Rules should differentiate between profit and non-profit organizations.
- Concerned that it would affect trapping activities by calling them commercial use.
- I would like to suggest that rafting guides be also included in this proposal. While serving as a commissioner, we fielded dozens of complaints about floating/rafting guides and the fact that they are making big bucks from guiding but paying absolutely nothing for the privilege. Also by licensing, there could be some control of their activities. Most are conscientious but, like many things, there are also some bad actors who have complete disregard for the neighboring property owners. If they were licensed and paid fees there would be some revenue to help take care of the problem ones. This could have a huge benefit in developing better relationships with landowners, perhaps taking the road/river access dialogue down a notch or two.
- On behalf of Search and Rescue access to public land is important for training. Before the Thompson Lake area opened up to public use we did not have access to training there. Since that has changed we have had

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dive and K9 water training there several times. Please keep that consideration in future plans to allow the EMS people easy access to public lands for training.

- What type of commercial use are you talking about: logging, fishing, mining, hunting, camping? Hunting, camping, fishing, hiking have rights too. Game ranges, forests, streams, and trails belong to everyone.
- Many areas have commercial use that are not listed in the meeting handout
- There is a difference between a commercial use entity that uses a site for its primary source of income and a commercial use entity that uses a site as one part of the overall services they provide.
- If the FWP Commission moves forward with establishing a process, criteria, appropriate use and rules, the Montana Wildlife Federation (MWF) believes definitions of “commercial” are critical to the considerations and that all group users must be included. While a non-profit organization hosting a wildlife education program or bird watching opportunity may or may not receive compensation from attendees, a permit, contract or agreement should be required to hold them accountable; they must abide by established rules. In this case the question might be also be asked, “Should they pay a permit fee if they are not receiving compensation?” The answer should be yes. There are costs for department administrative support, maintenance from increases use and impacts, while they may be subtle, there are impacts and a flat fee for each category of commercial use is the only way in which it can be addressed equitably.

Definition of “Lands and waters managed by FWP”

Some people commented that the rules should include a clear definition for “lands and waters managed by FWP.” Some people asked whether the rules would apply to lakes or only rivers and streams. One person agreed that FWP has the authority to regulate commercial use on its lands but argued that FWP does not have the authority to regulate commercial use on the water. One person pointed out that the rules should distinguish between rules that apply to commercial use of lands and commercial use of waters.

- Need to define and describe what constitutes “lands and waters managed by FWP.”
- What do we mean by FWP owned land? This is not correct. It is public land.
- Would the rules apply to commercial use on lakes, e.g. Ft. Peck?
- Because there is already commercial use occurring on some FWP sites, these sites should be separated as different uses and management policies are in play – fishing access sites on streams, rivers and lakes; wildlife management areas primarily for waterfowl; wildlife management areas primarily for big game species; and state parks such as Giant Springs State Park near Great Falls.
- Commercial use of the waters is protected by Articles 7 and 8 of the “Treaty of the Upper Missouri (Omaha)”, which states that the navigation of all lakes and streams shall be forever free to citizens of the United States. Commercial use of the water within the state has been going on for over 100 years – prior to statehood – and is clearly documented on Flathead Lake by numerous pictures and written accounts, e.g.

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commercial steamer and paddle wheel boats, and other lake boats...all without FWP approval or blessing. FWP does not have the right or authority to control or administer commercial use of water.

- There are two separate issues. The first is controlling lands, and the second is controlling waters.

Goals, Objectives, Need for Rules

Some people commented that FWP should establish clear goals and objectives pertaining to the rules and explain why these rules are necessary.

- FWP needs to establish clear goals and objectives when developing the rules.
- Questions what the reasoning is to regulate it at this point. While the idea is good, there seems to be no stated objective.
- Need to first establish if this should be done. Are such rules needed? Will it result in a form of unneeded inflexible bureaucracy? Would it be better to allow regional managers to make decisions for their regions? Such a regional decision could be challenged before the commission if there is disagreement. The commission even now has the final say. If the regional manager feels he needs to he can ask the commission for help beforehand. No set of rules can fit all circumstances. Statewide decisions are already decided on by the commission.

Input from FWP Staff

Some people recommended that FWP consider input from staff when developing the rules.

- Use input of FWP staff and their expertise.
- Listen to science and staff.

Concerns about allowing commercial use to occur

A number of people expressed concern that in developing commercial use rules the department had already decided that it was appropriate to consider commercial use for any of its sites. These people want to be sure that FWP first assess whether or not commercial use should be allowed at all at some sites or types of FWP land. Their chief concern was allowing commercial use to occur at wildlife management areas. Other people expressed general concerns about commercial use occurring on lands and waters managed by FWP and/or the impacts commercial use might have on the non-commercial public. Some people expressed specific concerns about authorizing commercial use on wildlife management areas.

- We don't want any commercial use.

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- There should be no use of state land for commercial use.
- There should be no more expansion of commercial use on lands and waters under the control of FWP.
- Outfitting, for-profit activities should not be allowed, or if they are, they should be taxed for use of public lands/resources.
- Commercial use permits are difficult to administer and commitments of personnel, time, law enforcement, and resources are overwhelming.
- Because of the strength of the industry, controls on commercial use are often based less on the resource than on politics.
- Once commercial use is allowed, the general public becomes unwelcome competition.
- Once established, commercial use tends to focus on expansion of operations, e.g. permittees pursue permanent sites, corrals, tree stands, private trails, etc. How does FWP plan to control this expansion? Do you have the personnel and resources to conduct regular, objective inspections and evaluations?
- Many places are at the upper limit of public use now and any commercial addition will degrade, overuse, or subject all to limits.
- Once commercial use is established, it is difficult to remove this use for any reason. Politics come into play.
- In every issue where commercial use of public resources is allowed, the commercial use increases and this use becomes an entitlement. Then politics kick in, pressure is applied, and commercial use increases again. The more commercial use allowed, the more negative impact on the public use of the resources.
- An important part of this discussion is that this is as much about people management as it is about resource management. The science, protocols, practices, uses and intended objectives are well established. The introduction of “for profit” commercial use adds a difficult and complicated component to the responsibilities of those charged with the management of those public resources.
- Commercial use outfitting in wilderness and backcountry areas is an appropriate activity with a long and rich history. Fishing outfitting on Montana’s varied streams, rivers, and lakes also has a long history and benefits, but the overcrowding problems and diminished public opportunity on the water brings into focus the difference between the two. The Beartooth Game Range is a great example of a public resource that is superbly managed in regard to the land, wildlife, public use and access; but no commercial use is allowed.
- Commercial uses become entrenched over time with arguments of livelihood, committed financial assets or other resources, business plans and client reservations. This decreases FWP’s management flexibility, erode success and limit/eliminate FWP’s future ability to retract or limit commercial use(s) if necessary. Such entrenchment could also allow sincere and periodic objective review to be replaced by a commercial use’s mere existence as justification for its continued future.
- While Montana Wildlife Federation (MWF) supports some limited commercial use as we have indicated, we are troubled by the long-range implications. As we noted, policies, criteria and rules can and are changed by political, private, financial and other interests. In addition, commercialization by its nature not only

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becomes entrenched it also dictates policies and entitlements often to the detriment of the public. Even periodic review could be compromising as it may evolve into greater opportunity for the commercial user to the detriment of the public. This is a slippery slope but we believe some control, some regulations must be established before existing, unregulated use requires contentious and costly debate. If commercial use of FWP lands and waters is allowed, the most strict and very limiting guidelines and regulations must be established from the beginning.

- An invitation for commercial use is implied whenever rules and regulations are established and a fee structure is set. Once rules are in place, as well-intended as they may be, circumstances and human nature tend to promote modifying, changing and altering said rules usually to the detriment of the resource. In this regard, Russell County Sportsmen's Association is opposed to any commercial use on wildlife and waterfowl management areas. No outfitting of any nature or outfitted hunting should be allowed on WMAs.
- Commercial uses often develop user conflict or friction by securing (by permit or use) unique, special, monopolizing and/or exclusive opportunities. These uses are often advocated as being "necessary" parts of business plans or client expectations. Commercial uses should be at all times and in all places subordinate to existing successes and traditional uses on WMAs. Relative to some commercial uses, there is even potential to develop conflicts with hunters even as they represent the core foundation for WMA acquisition and maintenance.
- Commercial uses often appear to have no clear and appropriate justification beyond the desires of their own entity and/or they undergo no routine and sincere, objective and thorough evaluation of their presence. A cultivated or anticipated client base that could reasonably access the WMA alone (and so does not need commercial assistance) should not be sufficient justification. Many times a commercial use request will enumerate a desire expecting the WMA to cater to that "need" rather than first evaluating the WMA's limitations, existing uses, intents, concerns and management plans.
- Types of commercial uses of WMAs that could or do occur on other properties or on WMAs widely available to the public arguably unnecessarily expands commercialization of the public trust.
- Commercial uses increase cost of WMA operations. This may include increased time for evaluating, permitting, enforcement and monitoring as well as increases consumption of interpretive brochures and other facility supplies.
- WMAs widely available to or heavily used by the general public or representing habitat types/opportunities found elsewhere should be excluded from commercial considerations to avoid high potential for conflict, lost success, unnecessarily increased commercialization of the public trust and a potentially reduced or deleteriously adjusted public presence and advocacy. A WMA widely available (access, interpretation) to the general public arguably needs no commercial assistance and other non-WMA properties are better equipped/prescribed to entertain commercial presence.
- WMA management has a long and successful history independent of outside commercial interests. That has been an integral exclusion. Certainly many of the same concerns persist today with arguable no better way to address them than exclusion.
- WMA management is a product of public input and in reciprocating fashion it has likely influenced public advocacy. With increased commercial presence, there seems potential for an adjusted public advocacy that

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could deleteriously adjust the current public trust doctrine relative to commercialization. Certainly guided and non-guided visitors often have different expectations and public advocacies.

- The Montana Wildlife Federation (MWF) is deeply concerned with increasing commercial ventures wrapped around public wildlife, wildlife productive habitats, hunting and fishing, the use of publicly owned properties and public waters and any competition or diminishment that may evolve for general recreation opportunities. Therefore we have some anxiety over two points under consideration in this scoping process: 1) validating (appropriate) commercial use, and 2) the development of rules governing commercial use of FWP lands and waters. MWF does believe some limited and restrictive non-consumptive commercial use may be considered by the department, such as river outfitter launches at Fishing Access Sites, wildlife education programs and non-profit organizational use.
- The Montana Wildlife Federation (MWF) has grave concern that validating commercial use on WMAs may deviate from original purchase justifications, may open the door to rule and criteria changes from political, financial or special interests in the future and that such changes could deteriorate management principles founded in the public trust. MWF believes there may be room for limited commercial use of some WMAs outside of hunting seasons. For instance, Freezeout Lake may be available for educational tours, non-profit events or bird-watching during the summer/early fall outside of any/all hunting seasons or critical nesting periods as long as the service provider abides by the rules.
- The strongest legal foundation for current state management of the public trust (to include resident and nonresident considerations) is tied to recreational (vs. commercial) use. An expanded tolerance for commercial use potentially erodes that foundation.
- Commercial interests are hard to control and law enforcement efforts are resented. The Board of Outfitters does not adequately monitor the industry or enforce the rules. Sportsmen view outfitters as largely an unregulated group and therefore they have no desire to see this industry expand to FWP lands.
- Control must be asserted now over what may very well be a massive problem with commercial outfitters taking increasing interest Montana's bountiful wild areas.
- Outfitters and people that run outfitter type hunting and fishing businesses should not be allowed to use lands other than the lands that they have leased. They will not let the public hunt on their leased land so they and their clients should not be allowed to hunt on land leased or paid for by the Montana sportsman OR naturalists.
- The Department should not be advocating commercial use of public's fish and wildlife resources. We have been through this with the fishing outfitters and guides, they have been given a free ride.
- FWP is on greasy slippery slopes when serving many masters. Outfitter/Commercial interest/tourists dollars do not benefit ever the individual. All this type of regulation usually does is make it more difficult to experience/recreate.
- Many of our FWP lands are not compatible with commercial use in any form. It is important not to lose sight of the original purpose of these lands as well as historic uses. Game ranges in particular do not need additional pressure. Commercial use should be last on the list of priorities for any area. The original and primary objective for a site should be first on the list. The resident Montana public should be second.

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- Licensed outfitter and packers should not be allowed into the public forest, nor should commercial logging or mining be allowed. Commercial use of lands have ruined the natural beauty; limited public access; polluted rivers, streams and grounds; been detrimental to game populations; and have caused untold hard feelings between sportsmen and commercial users, as has been seen in other states.
- By allowing commercial use of our lands, the hunter, fisherman, camper, etc., will be in direct controversy with the commercial user. The ground was intended for recreation of the public, not commercial use by or for the few with money or influence on power.
- Every time outfitters make a gain in this state the sportsperson loses. The resident or “Joe Average”, no matter what state they are in, their rights and interests come first.
- We (FWP) haven’t got a good track record over regulations. We had a set number of outfitters licenses and now it’s out of hand.
- Need to assess how the USFS is managing commercial use. Commercial use is causing problems for the USFS. It has turned into a primary purpose in many cases. Because of a strong outfitter lobby and very vocal local presence, the USFS caters to commercial interests ahead of public interests. Outfitters have been allowed exclusive commercial sites, grazing, priority days, and travel days. These are viewed as a right and they are saleable.
- U.S. Forest Service lands have long catered to commercial uses. Many of those uses now represent significant considerations and issues relative to management flexibility. Certainly a review of these circumstances seems an appropriate element of this process.
- Commercial fishing and commercial whitewater (on certain sections and during certain times of the year) constitute a significant amount of river traffic. I know this from compiled statistics and from years of clinical observations. Montana is in a unique position to make sure the private citizen retains access to recreate and use public waters. Many western states, such as Idaho, Colorado, and Utah have public waters that are dominated by commercial interests or are locked up by private land. Montana has the great stream access law that has withstood onslaught into the nation’s highest courts. I think it is appropriate and imperative we continue with this, perhaps a populist, but wonderful philosophy that the private recreationist retain access to Montana’s streams.
- Increasing use is a major issue in Montana
- Outfitters and guides have access to land that the residents public don’t have access to.
- Commercial use should not be an inconvenience to the general public.
- The non-commercial public should not be restricted.
- Commercial interests are responsible for the loss of millions of acres of private and public lands to use by sportsmen.
- Concerned about commercialization of public land and resources. Will hunter opportunities decrease due to increased commercial use? Concerned about loss of hunter/angler opportunities.

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- The public is now being displaced and thrown out of places like the Missouri River by the outfitters.
- I'm seeing a deterioration of hunting and fishing opportunities in the last 10-12 years.
- Areas are getting locked out.
- Increased competition from outfitters may cause youth to become discouraged from sportsman activities.
- The Billings Rod and Gun club believes that under no circumstances should commercial users of public land, water or wildlife be allowed to influence the selection of who may legally use rivers, or harvest either fish or game. We believe that permits allowing for the use of restricted waters or licenses or permits to harvest game animals should be allocated by random draw to individuals only, with no influence from commercial users.
- Guaranteeing primary access for private recreationists is an essential cornerstone in the preservation of Montana rivers. The idea of establishing a citizen's day on sections of a river may instill awareness in the private user that the rivers are indeed theirs and their responsibility, creating a strong constituency to protect these valuable resources.
- Rules should reflect broadly and unambiguously that a person's decision to operate a commercial business on public waters and land should not interfere with, limit or effect in any way the noncommercial public's right to access and recreate on our state's rivers, streams, lakes and land.
- Above all, it must be made clear that outfitters, who are exacerbating the crowding problem, cannot enjoy their unlimited use to interfere with the private citizen's enjoyment of our waters.
- There is a successful formula for managing WMAs, shouldn't risk it by allowing commercial use.
- Wildlife Management Areas have specific dedicated uses captured in management plans and/or purchase justifications. Commercial use may deviate from these intentions.
- Unlike some public properties, WMAs largely have no mandate for multiple use and so no obligation to tolerate non-prescribed commercial use.
- WMA properties are widely successful. That success includes habitat quality and quantity, wildlife use, improvements (or lack there of) and traditional visitor expectations or experiences. Some elements of success, like forage for wintering wildlife, are obvious. Others, like quiet noncompetitive experiences or land unbroken by trails, are subtle but just as important. As well, management plans and actions are now focused on resources and existing use. Commercial use competes for or reduces that focus. WMA successes are arguably due in part to the historic exclusion of commercial use. Tolerance now for non-prescribed commercial use ignores the foundation of that past success and unnecessarily entertains the potential if not likelihood for reduced success.
- Clearly and unanimously, no one in attendance last night wants to see commercial hunting and fishing allowed on wildlife management areas. If there is no precedent please do not let the guidelines establish one.
- Don't want to see any WMA closure changes. Must be sensitive to when and where changes occur.

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- We don't want this process to open up hunting outfitting on WMA's.
- Is hunting outfitting on FWP WMA's open for consideration?

Private (non-commercial) interests having priority over commercial interests

Some people commented that the rules should state that the non-commercial public has priority over the commercial use.

- The paramount issue is the protection of the private recreational user. Any rules generated should plainly state that commercial users take second place to recreational users. In other words, in regards to recreation, rules must give private citizens priority over outfitters and guides using public waters and lands. Both fairness to the bulk of the state citizens and the health of the resource require this. If the private citizens of the state cannot enjoy the use of public waters and land, they will have little reason or incentive to see them preserved. These public resources need a broad constituency to preserve them and if the rights of the general public to recreate freely become secondary to commercial interests, that constituency will be lost.
- The experience of the private user should be a higher priority than that of commercial use. In other words, commercial use rules should be designed with consideration of the ability to maintain quality of the resources first and then quality of the experience for the private user.
- Regarding setting new rules for use of Montana streams, I feel the state must protect the private fisherman from the paid outfitters. Any regulations promulgated by the FWP should clearly set forth that the non-commercial user has the primary right to use state waters.
- The general public should have the first right of use over any commercial use.

Impacts the rules might have on commercial users

Some people identified impacts the rules might have on commercial users.

- Can we be assured that future rules won't regulate commercial users any more than they are now? I don't want to be regulated/restricted more than I am now. I want to be able to make decisions on where I take my clients based on weather, flows, hatches, etc.
- No one has suggested restricting access, but rules seem to infer that. The plan, as he sees it, is to control commercial use only.
- Will the number of outfitters and/or permits be limited?

Impacts on resources or facilities

Some people pointed out that the rules should ensure that commercial use does not negatively impact the resources or public facilities and that protection of the resources should be the number one priority.

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- Commercial use should leave no permanent damage or variations to the facility or the land.
- Only non-polluting activities should be considered.
- Too many people or too much commercial use can have impacts on the resource. Method and amount of use is a major concern.
- Impacts on resources must be minimized.
- Bird watcher groups are great. These types of groups would not degrade the resource.
- It seemed that one shared concern of nearly all the people who attended the meeting, whether they represented outfitters, sportsman, or FWP is the concern for the resource. None of us present want to see the resource damaged significantly whether it be public use, commercial use, or agency use. We all recognize that there is going to be some impact when a resource is used. Let's limit the impact as much as reasonable. The guidelines should address this and give local FWP managers the flexibility and authority to limit or deny access, commercial or public, if they can clearly see and demonstrate that the access threatens the department's management goals for that specific area.
- There should be an overall philosophy that gives highest consideration to the impact on the resource and the quality of the experience for the user.
- Commercial users need to be responsible for any and all clean-up associated with that commercial use, e.g., replanting, environmental waste, and hazardous materials.

Federal Stipulations

One organization expressed concern that in allowing commercial use on wildlife management areas FWP might be violating stipulations on federal funding.

- WMA properties were largely purchased and/or are managed with Federal dollars. Stipulations tied to those dollars cannot be violated. Any use outside the property's intended use and/or reducing its success by any measure arguably violates purchase intents, management plans and/or federal mandates. As well, uses that "advertise" outside entities, membership or efforts are arguable inappropriate.

Commercial use rules and statewide river recreation rules, guiding principles

Some people recommended that the rules clearly explain the relationship between the commercial use rules and the statewide river recreation rules: where there is overlap, where one set of rules might supersede the other set of rules, etc.

- Need to explain how the commercial use rules would affect or be affected by the statewide river recreation rules.

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- It is important that the commercial use rules refer to the River Recreation Advisory Council's Guiding Principles and explain how they do or do not apply.

Permit transferability and property rights

Several people raised the issue of permit transferability. Assuming that the commercial use rules would result in some type of permit or other form of authorization, they made recommendations on the transferability of the permit or authorizations. Some people recommended that the permits be non-transferable. Others recommended that the rules state that a permit cannot be sold, leased, bought, etc. Some people requested that the rules clarify that a permit is a privilege, not a right, and that the issuance of a permit does not guarantee that the availability of the permit in the future. One organization provided clarification on 37-47-310(3), MCA that addresses the transfer of a fishing outfitter's business and associated river use days. One person commented that if FWP is not going to limit the availability of commercial use permits, why is there a concern about property rights and transferability?

- Licenses and fees should be term limited and non-transferable.
- The commercial use license (permit) should be non-transferable and requirements for responsible land use should be clear. If the license (permit) is abused in any way it should be clear that it will be cancelled and not granted in the future for various lengths of time, depending on the severity of the infraction.
- Will these rules address the issue of permit transferability? Permits should not be guaranteed with the sale of a business.
- No license should be issued which could be sold by an individual for profit in the future, as is done now with liquor licenses.
- Guides and outfitters should not be allowed to buy and sell licenses for any use or for any reason whatsoever. If rules are necessary they should explicitly state that no guide or outfitter can gain or possess any supposed "right" or claim of "right" in the lands or rivers of this state. Do not follow the shameful and disgraceful federal example of granting outfitters and guides a private monopoly to use public lands and waters to the exclusion of the private recreational user.
- Any fee or permit system granting commercial users permission to use this public resource must be strictly limited and any "allotment" of user-days must not be allowed to be bought and sold at market prices.
- Need to consider the River Recreation Advisory Council Guiding Principle #11 that states that "...any allocation of recreational use of a river does not guarantee a person or business any right to have an allocation in the future..." There currently are examples of regulated rivers in the state where the buying and selling of permits or allocations is a known activity. FWP has allowed this to happen. If in the future FWP wants to limit or restrict commercial launches in any way, the buyers of these launches or permit have an excellent argument that they legally paid for their launches or allocations. How can FWP take away something that was bought and paid for? I would think FWP would not want to give away any access,

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restricted or otherwise, to land that the public owns. Permits should be leased on an annual basis to one company with no trading, selling or buying permitted.

- Permit policy should be framed as a privilege given, not a given right or a permanent asset to a business.
- Issues should include the leasing of client days and the transfer of commercial use permits. These items should not be considered the “property” of the commercial user. The State of Montana should maintain as much control and authority in the permitting process. An annual application process would give the state the opportunity to routinely assess the merits of the applicant with the condition of the resource and trends in private use.
- Regarding 37-47-310(3), MCA, the Fishing Outfitters Association of Montana considers a fishing outfitter’s “business” to include only those services licensed by the Montana Board of Outfitters relating directly to outfitting and guiding for fishing purposes. Licensed services other than fishing and separate unlicensed services, related goods, lodging, restaurants, or other facilities are not considered part of the outfitter’s business. FWP commercial use regulations should not alter, add, or abridge regulations relating to services and business practices administered by the Montana Board of Outfitters.
- If FWP is not going to limit the availability of commercial use permits, why is there a concern about property rights and transferability?

Administration, Monitoring and Enforcement

Some people offered input on the administration and monitoring of commercial use. Other people offered input or asked questions pertaining to the enforcement of the commercial use rules.

- Enterprises should be required to report on access activities on a scheduled basis.
- FWP must establish responsible individuals or a department to administer the program.
- There needs to be adequate on-site monitoring of permittees.
- Need to monitor how commercial use affects resources: water quality, wildlife habitat, etc.
- Need to monitor commercial use to ensure strict compliance with rules.
- How are we going to police this thing and the permit requirements?
- We don’t know how to control (commercial use) this thing.
- How do you provide for getting rid of a bad outfitter?
- It looks like there is no mechanism for the removal of undesirable outfitters.
- Removal needs to be part of the process. The Board of Outfitters is a joke. I’m not comfortable with the Board of Outfitters.

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- Revocation of a permit should be part of the process.
- Concerned who will enforce any new rules, and wonder if there will be any added enforcement.
- Licenses and such permits will need to be monitored and enforced with penalties to work properly. Would fines schedules require legislative approval?
- Who will administer and enforce the permits? FWP does not have the infrastructure to do this right now.
- Penalties and fines should be clear for not following the rules and should be stiff enough to completely discourage the practice of ignoring the rules.

Uniformity, Simplicity of Rules, Coordination with other agencies

Some people recommended that the rules be uniform and simple. Others recommended that FWP coordinate with other state and federal agencies to avoid duplicity and simplify the permitting process.

- There should be uniform regulations and guidelines.
- Be careful not to make the rules and associated programs too complicated. Consult the NPS system; it works well.
- Keeping the rules simple should help to cut down the workload.
- The system should be as simple as possible with a flat fee. One permit for all places. I don't want to have to think about where my guides are each day and whether or not they have the right permit for that location.
- The hunting and fishing regulations will probably become even more complex and harder to understand.
- As agencies regulate more, there are more layers for commercial users. Recommend that where possible FWP coordinate with other agencies to adopt one system, application process, etc.
- Would multiple commercial activities require multiple permits? Suggest activities be grouped into one permit.
- Administration should be streamlined, efficient, and integrate with other current management duties in order to minimize overhead and staffing requirements while maximizing compliance with statutes and rules.
- Need to coordinate with other agencies to make it easier for permittees to comply.
- Feels this could lead to double regulation of an industry. Both by Federal and State agencies.
- Other agencies manage commercial use and FWP should consider these examples when developing the rules.
- NPS issues an Incidental Commercial Permit for small scale operations. It is a straight forward system that FWP should consider.

Tribal Interests

A couple of people recommended that FWP look into how these rules might affect and/or involve tribes in Montana.

- Concerned how it would affect existing tribal treaties. We would need to get a legal scholar involved to determine this.
- Tribes should / would have a say in any new regulations.

Public Involvement

Some people offered input on involving the public in the development of the rules.

- Need to identify and solicit feedback from affected and interested parties.
- Need to identify and try to contact those who might be affected by these rules: invite them to the public meetings, etc.
- The more people involved in the process the better.
- I have major concerns regarding the erosion of public input into land management planning processes (example: Forest Travel Plans).
- In the past, one individual in Region One scuttled all dialog and public input for such regulations. That should not be allowed again.
- Given the potential impact of these rules on private recreational users, the minimal public notice of these meetings is troubling, raising the question of whether FWP has predetermined an outcome that favors commercial use.
- To further ensure the full and appropriate consideration of all things relevant, the general public should have ample opportunity to evaluate and to effectively input into considerations for any outside commercial use requests or reviews on any WMA.

Commercial Use Fees

Some people commented that the rules should require commercial users to pay a fee for use of lands and waters managed by FWP. Others argued that commercial users should not have to pay a fee and/or that FWP should also charge the non-commercial public. One association expressed concern that fees would imply entitlement.

- Outfitters should have a yearly licensing and fee requirement.
- Outfitters should be paying fees.

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- Anyone who makes a buck on FWP land should pay the State.
- FWP should receive fees and benefit from commercial use.
- Any commercial user of any FWP site should be charged a fee. If they make a dollar on state land or waters, so should the people of Montana.
- Some commercial users are not purchasing fishing licenses to pay their fair share to support FAS sites, yet they are using the sites.
- I don't think FWP should charge Outfitters commercial use fees to use the fishing access sites. Just charge a \$4 flat fee on everyone's car license plates, just like you did with the state lands. Or charge a \$10 fee on all car plates to cover the school lands and fishing access sites. Countless times I have found local teenagers using our fishing access sites for keggers and parties, burning anything they can find in a bonfire. They don't have to pay a fee to trash these pristine places. Many other times the boat-ramps are blocked by sunbathers. If you are going to charge a fee to use these sites, you must charge *everyone*.
- Educational/nonprofit users shouldn't have to pay a fee.
- I would like to see nonresident personal users pay something for resource use.
- If commercial users have to pay, shouldn't noncommercial users also have to pay?
- Some commercial users already pay motorboat licensing fees and this money helps pay for access sites. Haven't these commercial users already paid their fair share? Why should they be charged an additional fee?
- Fees tend to imply an entitlement mentality and anytime the commercial profit motive is introduced into the management of the land, water and wildlife, public opportunity is diminished.

Expenditure of Fee Revenue

Some people recommended that revenue from fees should be earmarked for the location where the fees are generated. Others recommended that the fees should go back into a particular program related to the type of use that generated the fees. One group pointed out that FWP needs to accurately track revenue and expenses. One person is concerned about FWP having to get spending authority from the legislature.

- If there are fees, the money should go to the sites where the money was generated and towards education programs pertaining to regulations.
- The system should be designed so that the revenue generated from river use is earmarked for the FAS program and related river management. The revenue from river use should not go to other places or programs, e.g. state parks, etc.
- Regarding fee revenue disbursement, FOAM recommends that fees collected under this proposal should be spent solely on fishing access site management and maintenance, preferably in the FWP regions or on

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individual rivers which generate the fees, and for administrative costs associated with the commercial use fee program. If separate fees are collected as part of a river recreation management plan, a portion of those fees should be used for management and maintenance of fishing access sites included in the plan with the balance of the revenue collected spent on the plan's development and administrative expenses.

- FWP needs to develop a system that accurately tracks revenue and expenses.
- I am concerned that the legislature will see the monies generated from commercial entities as belonging in the general state fund after a while. Then the legislatures could look at hunting and fishing license fees as a source for the general fund (I doubt this would happen). If this did happen, it could cost the state some of the federal matching funds.

Fee Structure

Some people offered input on how to calculate (establish) fees and/or the amount of the fees.

- The fees should be based on the size of the operation and the frequency of use.
- The fees should offer a fair market return to the taxpayer for the use and should be earmarked to provide sufficient employment and resources to manage and expand the oversight to suitable levels.
- It makes sense to charge more for use on rivers where impacts are greater and the management needs are higher.
- The fee should be the same no matter where the use occurs: a 2-tier system would be unfair to outfitters who operate primarily on restricted-use rivers.
- The Fishing Outfitters Association of Montana (FOAM) recommends that fees charged for income generated from use of FWP lands should be based on reasonable calculations determined by scale of income from actual use and/or time-on-ground. Portions of fees compensating for commercial impacts may be commensurate with maintenance costs, either actual or averaged from prior expenses. However, FOAM considers the additional income generated by its nonresident clients purchase of fishing licenses sufficient to offset any additional maintenance costs created by our commercial use to serve those clients. Fees charged for use of cooperatively-managed river stretches with mixed administrative authority should follow similar guidelines within limits of federally-mandated fee policies.
- If specific river recreation management plans mandate fees to offset management development costs, FOAM recommends that outfitters and guides should pay fees determined by a consensus-based group, typically, the Citizen Advisory Council helping to develop the management plan. FOAM outfitters and guides must be included in any CAC consideration of fees. Any river management fees should supercede and preclude the above-mentioned service day fee for commercial entities who utilize fishing access sites included in any river recreation management plan. FOAM encourages such fees be administered similarly to the process outlined above. Commercial users administered under a river-specific recreation management plan will not be the sole contributors for defraying administration costs, nor will they be required to pay a fee disproportionate to their actual use-level percentage. Non-commercial users will also be required to contribute to management and administration costs of river management plans. River management plan fees

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should fit local needs, but be administered in a uniform policy to avoid a statewide checkerboard of “receipts” (decals, stickers, mirror tags, etc.) and requirements.

- Fees should be high enough to discourage overuse and to prevent a flood of applicants.
- Fee should cover cost of administering and policing the commercial use.

Special Use Category

One organization recommended that FWP establish a Special Use category for one-time use.

- The Special Use category may be an allowance, again, for minimal – one time use for educational opportunities, non-profit events or even field trials, as an example, as long as the service provider abides by the suggested rules and the special use does not include any taking or harvesting of wild (the public’s) fish and game.

Liability

Some people raised the issue of liability.

- Need to require liability insurance of commercial users.
- Is the department liable if it charges a fee?
- If a fee or permit-fee system is adopted, can the State of Montana and/or FWP be held accountable or liable?

Criteria for evaluating a commercial use proposal

Several people offered criteria for evaluating a proposal to conduct commercial use on lands or waters managed by FWP. One organization recommended that permits should automatically be issued to licensed fishing outfitters and guides.

- Would the activity cause disruption or otherwise disturb general public access or usage?
- Is there public demand for or opposition to the proposed commercial use?
- What would be the cost to the user? What would be the cost to the provider?
- Is the commercial use activity/entity bonded or insured against client injury? State of Montana should not be held liable.
- As every agency charged with managing public resources should have stated public use objectives, any commercial use rules must be compatible with those objectives should they be permitted at all.
- Is the enterprise a legal entity and can it demonstrate responsibility for its activities?

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- Would the commercial use harm the land or water? Regulations need to protect the resource.
- Need to consider public safety when evaluating a proposal to conduct commercial use.
- FWP should consider three things when evaluating a proposal to conduct commercial use: 1) would the use degrade the resources?; 2) would the use conflict with the purpose of a site?; and 3) would the use impede the enjoyment of other users?
- Is there a need to have a guide to enjoy the services/site/resources, or can you get the full experience without the services of a guide?
- Is the commercial use available elsewhere?
- Administrative workload.
- Any effect these commercial uses might have on the land, water, or wildlife.
- Any differences in types of use that would be available to someone with a guide compared to the types of use available to someone without a guide.
- Assess whether there would be discrimination towards the guided public versus the public that goes on their own.
- FWP should not prohibit commercial uses that provide a service to people who for physical or other reasons cannot enjoy the resources on their own.
- Need to assess the timing of the proposed use to ensure the use would not interfere with hunting or other activities, intentionally or unintentionally.
- Make sure use as defined is tied to resources and not arbitrary in nature.
- Impacts of use need to be determined. There is a different impact from launching a boat at an access than there is from a Hotdog Stand at that access.
- One issue that needs to be considered is how will the commercial use impact the hunting/fishing of private citizens.
- If a particular use, commercial or public, is going to blatantly detract from the sportsman's opportunity to hunt or fish, the access should not be allowed. There must also be some recognition that there may be commercial activity that does not adversely affect sportsmen's opportunities. The guidelines should allow local land managers flexibility in making these use decisions. But the land managers should not be creating the guidelines in the field.
- Use history should be given some consideration, if in fact, it cannot be demonstrated that the use does not damage the resource or diminish opportunity for Montana sportsmen.
- Need to consider the condition of the resource, the history of the utilization – private and commercial, impact on Montana resident private use versus out of state utilization, and the integrity and reliability of the commercial use applicant.

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- Need to consider land management, trail and road maintenance, available access to and from waters and forests, and the public (non-commercial) use of the area.
- Need to consider the rights of the private recreationist to access and enjoy what they own.
- Need to consider how the disabled and handicapped would get access.
- I support allowing service oriented business in our parks, forests and wildlands to the extent, and only to the extent, that they: 1) Serve the general good of the general public. 2) Do not deny the general public of access or use. 3) Are not allowed special consideration due to being granted the PRIVELEDGE - not the right - to use public lands to profit. I am highly opposed to outfitters and outfitting practices that cater to privileged, out of state business. Rates for services must be fixed and fair in order to serve the general population. I am highly opposed to allowing outfitters the privilege of resource use at the expense of public access - such as with any lottery system or in any instance in which the public is denied access or use in order to allow outfitter use. Public use and benefit must be held as highest priority in all endeavors - especially in access. Thank you for your consideration.
- According to the Fishing Outfitters Association of Montana, commercial use permits should be automatically issued to all currently-licensed fishing outfitters and/or guides, and any who are licensed in the future, regardless of date licensed. FWP should not use commercial licensing to restrict the population of fishing outfitters or guides using any land not administered now and in the future under a river management plan developed via the statewide directives recently adopted by the FWP Commission.
- The resources are managed under the principles of the “public trust.”
- If the commercial use diminishes the ability of any fish, wildlife and parks personnel from performing his/her regular duties as necessary to manage said resources under the principles of the “public trust” it shall be prohibited.
- The resources and/or general public recreation opportunity (non-commercial users) to enjoy or pursue the resources must not be adversely impacted (limited, inhibited, restricted or reduced) in any manner.
- Any commercial use of FWP lands or waters must comply with all applicable federal aid or state grant requirements.
- Any commercial use must demonstrate a need and a public benefit from services that does not conflict with, interfere with or compete with objectives, resource management plans, existing use, the intent of the specified land or water nor create any user conflict and must be subordinate to its general public and intended use (non-commercial user and/or wildlife).
- The commercial use must not create any implied or direct exclusive non-consumptive or consumptive use or entitlement (by permit, contract, agreement or use) that precludes the public.
- Any commercial use requires a permit, contract or agreement and said permit is exclusive to the permittee and must be non-transferable in any manner.
- Any commercial use permit, contract or agreement must be strictly enforced with any violation of the terms resulting in immediate revocation.

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- Any commercial use permit, contract or agreement must require an annual term and a fee based upon “fair market value,” wear and tear, maintenance, increased enforcement costs and, at a minimum, wholly offsets any administration costs.
- Any commercial use permit, contract or agreement must include a listing of services to be provided and user numbers, seasonal or time restrictions.
- Any commercial use permit, contract or agreement must include an approval/denial process that must include some sort of consideration for the applicant, do they have any FWP violations, etc. and the decision should be final – without appeal.

General Comments

- Outfitters are the vehicles to enjoy the resource.
- Some outfitters are giving trespass permits.
- There is already commercial use, meaning that this rulemaking process is warranted.
- Land going into Conservation Easements is causing reduced access to USFS lands. We must take a wider view.
- Each site or areas should control their own commercial activities.
- Public property needs a level of protection equal to private property.
- Rules should acknowledge the public’s right to visit lands and waters managed by FWP whether they go on their own or use the services of a commercial operator.
- FASs in many cases are the only access for the public. Should be careful not to impact this as a result of restrictions.
- Supports the concept of regulating Commercial Use.
- The Billings Rod and Gun Club believes that FW&P has the obligation to ensure that the public’s resources are enjoyed in a fair and equitable manner. For instance, we would have your agency review all big game herd units and where it is determined that money, not a fair drawing, is dictating who is harvesting the most desirable segment of the game population (large male animals), the agency would place the entire quota if this segment of animals on a RANDOM PERMIT DRAW. That way when the landowner charges a fee, he or she is charging for access, not the public animal since that issue was decided through the draw.
- The Nature Conservancy of Montana's Pine Butte Guest Ranch most definitely has a stake and a history in this. We of course would selfishly hate to see our historical use terminated due to these guidelines. We do not feel our use damages the resource significantly nor detract from sportsman opportunity. More important is the role that The Nature Conservancy of Montana plays in land conservation across the state. From Wild Horse Island, to the Beartooth WMA, to Ovando, MT in the Blackfoot The Nature Conservancy and FWP have a long and productive history of collaborating to protect habitat in Montana. We are partners. The Nature Conservancy's mission is crystal clear. We exist "to preserve the plants, animals, and natural

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communities that represent the diversity of life on earth..." Pine Butte Guest Ranch functions to support our state office in fulfilling its conservation mission. When the Nature Conservancy of Montana is doing well there are simply more opportunities for our partners such as FWP. Despite what how these guidelines affect Pine Butte Guest Ranch's operation The Nature Conservancy of Montana will continually look for and strive to partner with FWP to protect more Montana habitat. The work transcends both of our respective outfits. It is about what we are leaving for future generations. My hope is that FWP recognizes that The Nature Conservancy is an ally and that the two organizations have much more in common than we have at odds.

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